IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANK BUELNA in his Own Right and as Parent and Natural Guardian of Minor Plaintiff NATHAN BUELNA and JOSEPH RODRIGUEZ	:	CIVIL ACTION
Plaintiffs	:	
v.	:	
CITY OF PHILADELPHIA, et al.	:	NO. 01-5114
Defendants	:	

Newcomer, S.J. April , 2002

O P I N I O N

Presently before the Court is plaintiffs' Motion for Leave of Court to File an Amended Complaint and defendant's response. For the reasons as follow plaintiffs' motion is DENIED.

BACKGROUND

This action stems from an October 6, 1999 incident where the plaintiffs allege that the defendants' conduct violated their federal and state civil rights. Plaintiffs filed suit on October 9, 2001, against the City of Philadelphia, the South Eastern Pennsylvania Transportation Authority ("SEPTA") as well as sixteen (16) individual officers from both entities. A pretrial conference was held on December 13, 2001. The parties were given until March 13, 2002, to complete discovery. On March

11, 2002, the plaintiffs filed the instant Motion for Leave of Court to File an Amended Complaint adding a Monell Claim against SEPTA. Included in plaintiffs' original Complaint is a respondeat superior claim against defendant SEPTA. The statute of limitations for the proposed Monell Claim has already run.

DISCUSSION

"The decision to grant or deny leave to amend a complaint is committed to the sound discretion of the district court." Coventry v. U.S. Steel Corp., 856 F.2d 514, 518 (3d Cir. 1988)(citing Foman v. Davis, 371 U.S. 178, 182 (1962)). To that end, without an "apparent or declared" reason for denial, such leave shall be freely given. Id. at 519. Appropriate reasons for denial include, among others, "undue delay ...[or]... undue prejudice to the opposing party...." Foman v. Davis, 371 U.S. 178, 182 (1962).

Plaintiffs' request triggers concern with both stated grounds for denial. With four and a half months of the discovery period behind them and two days left, plaintiffs seek leave to essentially add an entirely new claim or concept to their Complaint. While it is true that the claim they seek to be added relates to the conduct alleged during the October 6, 1999 incident, it is also the case that a great deal more is involved. The proposed Monell Claim against SEPTA requires a showing that

"the custom or policy of SEPTA, including the failure to train properly, lead to the constitutional violation." Davis v. SEPTA, 2001 WL 1632142, *8 (E.D.Pa. 2001). Such a showing would require defendant SEPTA to audit its policies, customs and procedures and turn over any material germane to the new claim. These materials would be very different in scope from the materials pertaining to the plaintiffs' current claims against SEPTA Officers Butler and Kaiser and the current respondeat superior claim against SEPTA itself. All of this, of course, would have to take place in the days leading up to trial, a time when counsel is preoccupied with preparing for trial itself rather than retracing the steps leading to trial. In addition, new witnesses and a new defense would need to be supplied under an extremely tight time frame. The Third Circuit has embraced the notion that the addition of a claim requiring such additional extensive discovery presents prejudice to the defendant. Adams v. Gould Inc., 739 F.2d 858, 869 (3d Cir. 1984) (citing Serrano Medina v. United States, 709 F.2d 104 (1st Cir. 1983); DeBry v. Transameria Corp., 601 F.2d 480 (10th Cir. 1979)).

In addition, plaintiffs' request is the product of undue delay and would place an unwarranted burden on this Court. Undue delay constitutes sufficient grounds for the denial of a motion for leave to amend. Lorenz v. CSX Corporation, 1 F.3d 1406, 1413 (3d Cir. 1993). "The passage of time, without more,

does not require that a motion to amend a complaint be denied; however, at some point, the delay will become 'undue,' placing an unwarranted burden on the court...." Adams 739 F.2d at 868. The alleged conduct giving rise to this case, and the proposed claim, took place nearly two and a half years ago. At the latest, the plaintiffs were aware of defendant SEPTA's involvement in this matter on October 9, 2002, the day they filed their Complaint. This is evident as plaintiffs included a claim against defendant SEPTA under a different legal theory than the one currently proposed. Now, more than two and a half years after the conduct giving rise to this matter occurred, plaintiffs seek leave to allege a new theory against SEPTA. Nothing has changed in the period preceding or subsequent to the plaintiffs' filing their complaint that would explain such an undue delay in making this new claim. Plaintiffs' explanation that a "clerical error" was made does change the fact that this claim should have been made initially or corrected in a timely manner. Plaintiffs have had more than ample time to file the proposed claim, they have failed to explain the undue delay in doing so. In the meantime, this matter has progressed through the Court's case management system and is ready for trial.

Finally, plaintiffs' proposed amendment fails to meet the two year statute of limitations imposed on Monell Claims because it does not meet the criteria for relation back

amendments under Federal Rule of Civil Procedure 15(c)[1]. Wilson v. Garcia, 471 U.S. 261, 105 (1985); 42 PA.CONS.STAT.ANN. § 5524. In order to be able to relate a proposed amendment back it must fall within one of the three subsections of Rule 15(c). It is clear that plaintiffs' proposed amendment fails to meet the requirements of subsections one and three. The statute of limitations on a Monell Claim is two years. The events giving rise to this claim occurred no earlier than two and a half years ago. In addition, plaintiffs are not seeking leave to change a party to the present suit. The plaintiffs fail to meet the requirements of subsection two because the proposed claim arises out of conduct different than that which served as the basis for the original Complaint. In the proposed claim, plaintiffs point to defendant SEPTA's policies, customs and procedures as the conduct giving rise to their claim and not the events which took place on October 6, 1999. The plaintiffs' claim will not relate back under Rule 15(c) and is therefore barred by the two year statute of limitations on Monell Claims.

AN APPROPRIATE ORDER SHALL FOLLOW.

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Clarence C. Newcomer, S.J.

[1] Plaintiff Nathan Buelna's proposed Monell Claim is not precluded under this theory. Nathan Buelna is a minor and therefore the statute of limitations does not begin to run for him until he turns eighteen years of age.